No. 79-1777

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE LEGISLATIVE HISTORY OF §301 DOES NOT REVEAL THAT CONGRESS CONSCIOUSLY PRECLUDED INDIVIDUAL LIABILITY IN CASES OF THIS NATURE.	3
A. HOUSE CONSIDERATION.	4
B. SENATE CONSIDERATION.	7
III. RESPONDENTS' ASSERTION THAT THE REMEDY OF DISCHARGE OR DISCIPLINE OF EMPLOYEES IS LESS DISRUPTIVE OF INDUSTRIAL PEACE THAN A DAMAGE ACTION AGAINST INDIVIDUALS WHO ARE RESPONSIBLE FOR AN UNAUTHORIZED WORK STOPPAGE IS ERRONEOUS.	11
IV. CONCLUSION	12
APPENDIX	
RULE 28.1 DISCLOSURE OF PARENT AND AFFILIATED COMPANIES	1a

TABLE OF AUTHORITIES

Cases: Page

Charles Dowd Box Co., Inc. v. *Courtney*, 368 U.S. 502 (1962) 1, 9

Griffin v. *UAW*, 462 F.2d 181 (4th Cir. 1972) 12

Lawlor v. *Loewe*, 235 U.S. 522 (1915) 11

Statutes:

Labor Management Relations Act of 1947 (61 Stat. 136), 29 U.S.C. §§ 141, *et. seq.* § 301(b), 29 U.S.C. §185(b) 1

Congressional Material:

Hearings Before The House Committee on Education and Labor on Amendments To The National Labor Relations Act, 80th Cong. 1st Sess. (1947) 5

Hearings Before The Senate Committee on Labor and Public Welfare on Labor Relations Program, 80th Cong. 1st Sess. (1947) 7

H.R. 4908, 79th Cong., 2d Sess. (1946) § 10(d) 1

H.R. 725, 80th Cong. 1st Sess. (1947) 4, 7

H.R. Rep. No. 245, 80th Cong., 1st Sess. (1947) 7

H. Conf. R. No. 510 on H.R. 3020, 80th Cong. 1st Sess. (1947) 8, 9

Minority Views on S.R. 1177, 79th Cong., 2d Sess. (1946) 7

S. 55, 80th Cong., 1st Sess. (1947) 3, 7, 9

S. Rep. No. 105, 80th Cong., 1st Sess. (1947) ...8, 9, 10

92 Congressional Record 5705 (1946) 7

93 Congressional Record 4840 (1947) 10

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I. INTRODUCTION

Respondents argue that §10(d) of H.R. 4908, 79th Cong. 2d Sess. (1946) (the Case bill) represents the Congressional expression that the loss of employee status was contemplated as the sole basis for handling employee breaches of a collective bargaining agreement arising from participation in unauthorized work stoppages. (Resp. Br. 15-16, 20)[1] Respondents also assert that their position is supported by this Court's recognition in *Charles Dowd Box Co. Inc.* v. *Courtney,* 368 U.S. 502 (1962) that §10 of the Case bill was the direct antecedent of §301 of the Labor Management Relations Act of 1947. (Taft-Hartley Act) (Resp. Br. 16, 20, 24)

Amicus AFL-CIO asserts in its brief that Congress "clearly determined" that a suit for damages against indi-

[1] Citations to "Resp. Br." refer to the Brief for the Respondents. Citations to "Am Br." refer to the Brief of the *Amicus* AFL-CIO.

vidual employees would not be available under §301. (Am. Br. 6) *Amicus* also states that the legislative history demonstrates "unequivocally" that Congress focused on the question of individual liability and "consciously precluded" such liability. (Am. Br. 7) *Amicus,* in its brief, reviews the legislative history of the Case bill and the Taft-Hartley Act and concurs with Respondents that Congress intended employers to have the right to discharge employees who engage in wildcat strikes. (Am. Br. 7)

The Respondents' analysis of the legislative history of §301 of the Taft-Hartley Act is defective since it fails to acknowledge the fact that §10(d) of the Case bill[2] was not included in either the House or Senate bills or in the bill approved by the Conference Committee. *Amicus* AFL-CIO attempts to minimize the significance of the absence of the provision by arguing that the same "end" was nonetheless accomplished in the Senate Bill. (Am. Br. 22-23. n. 14)

Respondents' reliance upon the legislative history of §10(d) of the Case bill as supporting its position that Congress foreclosed the avaiiability of relief sought by Petitioners is unfounded. §301 of the Taft-Hartley Act neither contains a provision similar to §10(d) of the Case bill nor does it contain a provision which specifies that employees who participate in strikes in violation of a collective bargaining agreement which are not ratified or approved by the bargaining representative will lose their status as "employees" under the National Labor Relations Act, 49 Stat. 449, as amended by the Taft-Hartley Act.

---

[2] Section 10(d) of the Case bill, as passed by both houses, reads:

> (d) Any employee who participates in a strike or other interference with the performance of an existing collective bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights with such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of Sections 8, 9 and 10 of the National Labor Relations Act: Provided. That such loss of status for such employee shall cease if and when he is re-employed by such employer.

Amicus attempts to minimize and to rationalize the absence of the language of §10(d) which had been contained in the proposed bill of Senators Ball, Taft, and Smith in S. 55. These attempts should be rejected as unfounded. The recitation of the legislative history of §301 (Am. Br. 16-29) establishes the Congressional concern for individual liability as ultimately manifested in §301(b) but does not establish a concurrent intent by Congress to foreclose the availability of a damage action against employees who participate in an unauthorized work stoppage in violation of the collective bargaining agreement.

II. THE LEGISLATIVE HISTORY OF §301 DOES NOT REVEAL THAT CONGRESS CONSCIOUSLY PRECLUDED INDIVIDUAL LIABILITY IN CASES OF THIS NATURE.

Respondents and *amicus* argue that the legislative history of §10 of the Case bill, which is the "direct antecedent" of §301 of the Taft-Hartley Act represents a clear expression of Congressional policy with respect to the remedy available against employees who in unauthorized work stoppages in violation of the collective bargaining agreement. Under Respondents' and *amicus'* interpretation of the legislative history of §301, discharge or discipline are the only options available to an employer. The Case bill, however, was vetoed, and Congress failed to override the veto.

Equally erroneous in the argument of Respondents and *amicus* with respect to the importance of the legislative history of §10(d) of the Case bill is their failure to acknowledge that §301 of the Taft-Hartley Act had its own unique legislative history. The proper emphasis should be upon the development of the provisions of §301 as enacted. In this case, Respondents apparently assert that the legislative history of §10(d) is determinative of the individual liability issue even though the language of that provision was not included in either the House or Senate bills or offered from the floor during debate as an amendment.

Petitioners submit that a review of the legislative history of the Labor Management Relations Act of 1947 will establish that Congress did *not* intend to preclude a damage action against individuals in this factual situation.

A. House Consideration.

Notwithstanding the inclusion of §10(d) in the bill that was vetoed a year earlier, Representative Case did *not* include a similar provision in his proposed bill in 1947. The provision in H.R. 725 pertaining to federal jurisdiction involving breaches of collective bargaining agreements was divided into three subparts.[3] None of the subparts deal with the action that an employer may or may not take against individual employees.

Amicus argues that Representative Case made it clear before the House Committee that, under his proposal, individual employees would only be subject to discharge and not subject to a suit for damages. (Am. Br. 18) Petitioners submit that the excerpts from the House hearing quoted by *amicus* do not convey accurately the context in which the statements were made. The full exchange between Representatives Case and Landis is as follows:

> Mr. Case. Of course, if you cannot get jurisdiction over a group of workers, you cannot sue them. I mean, under H.R. 725, because there is no provision for suing individual workers, as such, or rendering any judgment against them.
>
> However, if you had a wildcat strike, I assume that there must be some organization that caused the strike, and if you can find parties where you can get service, and the court would accept jurisdiction, you can proceed there.
>
> But, of course, even in H.R. 725, under that provision relating to unfair labor practices, and the pow-

[3] The text of the proposed section of H.R. 725 is found in *Amicus* AFL-CIO's brief on page 17 in note 11.

> ers given to the National Labor Relations Board, they can proceed to deny recognition and deny the benefits of the Wagner Act to the members of the wildcat strike.
>
> Mr. Landis. I agree that you can deny the members the rights of the Wagner Act, but say there is one coal mine—we had an instance in Indiana where one coal mine went out on a wildcat strike, and the United Mine Workers organization did not like it, and they tried to get the men to go back to work, and they would not go back to work, and still refused to go back to work for several days.
>
> Who would you sue in that case?
>
> Mr. Case. Of course, I would think the United Mine Workers, as an organization, would have a pretty good defense to any suit for damages against them, if they ordered to men back to work.
>
> It would seem to me, if you had a local that went out on strike, and they were parties to a contract, the local would be liable for damages.
>
> Mr. Landis. The local organization?
>
> Mr. Case. Yes.
>
> Hearings Before the House Committee on Education and Labor on Amendments to the National Labor Relations Act, 80th Cong. 1st Sess. 125-26 (1947)

Amicus also includes in its brief (Am. Br. 18) an exchange between Representatives Hoffman and Case that pertains to the availability of damages against union leaders who call a strike in breach of the collective bargaining agreement. In order to fully understand the exchange between Representatives Hoffman and Case, the Court should have the benefit of the hypothetical situation posed by Representative Hoffman to which Representative Case responded. The exchange reads as follows:

Mr. Hoffman. So, it is just a voluntary organization composed of a group of individuals and a strike is called by the individuals, and the officers go ahead and call a strike and they violate a contract and the employer suffers damage. The organization itself may not have any assets. Do you think the individuals who authorize these fellows to break that contract and cause that damage should escape liability for their own action?

Mr. Case. Of course, there are other provisions. If they did that, they would lose their status as a labor organization.

Mr. Hoffman. That does not put dollars into the treasury of the employer.

Mr. Case. No; but I do not think you are going to get anywhere in this workmen's legislative problem if you are going to resurrect such a situation as in the Danbury Hatters' case. We are going to have to live with any legislation you enact, and it seems to me what you seek to do is to enact legislation that will stand up and with which you can live. The bill would protect the employer in getting other employees.

Mr. Hoffman. Under your theory what you say is that this voluntary organization known as a labor organization can break a contract and cause damage and yet the individuals who do that are not responsible.

Mr. Case. I do not say any such thing and the record should not be interpreted to show that.

If the organization should abuse its status as a labor organization, and if the laws of any State are what I concede they are in my State, if the leaders of the organization did what you said they did, they would be liable for action under various laws depending

> upon the kind of damage they did. (House hearings at 136)

The reference by Representative Case to the Danbury Hatters' case was in the context of officers of a labor organization who call a strike. The situation posed to Representative Case would be covered by §305(b) of H.R. 725 which was similar to §301(b), 29 U.S.C. §185(b) as enacted, since in the hypothetical situation the officers were acting as agents of the labor organization.

There is nothing in the House report on the House bill pertaining to the limitation of damage actions against employees who engage in unauthorized work stoppages in violation of a collective bargaining agreement. The report did state that a labor organization is to be bound by the acts of its agents and may sue or be sued. Any money judgment against the organization could be enforced only against the organization and not the individual members. H.R. Rep. No. 245, 80th Cong., 1st Sess. 46 (1947).

B. Senate Consideration.

At the hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S.J. Res. 22, 80th Cong., 1st Sess. (1947), Senators Taft, Ball, and Smith introduced S. 55. §302 of the proposed bill pertained to suits by and against labor organizations and consisted of four subparts.[4] The language of §302(d) is substantially similar to the language of §10(d) of the Case bill.[5] In his statement to the Committee, Senator Ball described §(d) in the following terms:

> [S]ubsection (d) protects the union from liability for unauthorized wildcat strikes and makes the

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[4] The provisions of §302 of S. 55 are set forth in Amicus AFL-CIO's brief in note 13 on pages 21 and 22.

[5] The inclusion of §10(d) in the Case bill was a result of an amendment offered by Senator Taft. See, 92 Cong. Rep. 5705. The language of §10(d) was initially set forth by Senator Ball on behalf of Senators Taft and Smith as Amendment No. 3 in the Minority Views on S.R. 1177, 79th Cong., 2d Sess. 10-14 (1946).

> employees who participate in such wildcat strikes liable to the extent of losing their legal privileges under the National Labor Relations Act. [Senate hearings at 14]

The provision was not incorporated in S. 1126 as reported. No mention is made of that proposed section or its effect in the Senate report. S. Rep. No. 105, 80th Cong., 1st Sess. (1947) Senators Taft, Ball, Donnell, and Jenner set forth in a separate section to the Senate report four provisions which they felt should be included in the bill and indicated their intention to offer the amendments on the Senate floor. Senate Report, pp. 50-56. The language of §(d) is neither one of the provisions mentioned in the supplemental views nor is it otherwise discussed.

During the Senate debates on the Committee bill, no mention was made of §(d) or the reasons why it was not included under the proposed §301 as it had been in §10 of the Case bill. No amendment was offered to include the language.

The Conference report resolved minor language differences in the provisions of the House and Senate bill pertaining to suits by and against labor organizations. No discussion concerning remedy against individuals is found in the report. H. Conf. R. No. 510 on H.R. 3020, 80th Cong., 1st Sess. 65-66 (1947).

Amicus acknowledges in its brief that the subsection authorizing the discharge of wildcat strikers was not included in §301 of the Senate bill. *Amicus* attempts to minimize the importance of this omission and states "that end was accomplished in the Committee bill by making strikes in breach of collective agreements unfair labor practices and thus unprotected." (Am. Br. 23, n. 14)

The Senate Committee report did provide for such an unfair labor practice but made it clear that it did not intend for the National Labor Relations Board to adjudicate all

disputes alleging breaches of collective bargaining agreement. S. Rep. No. 105 at 23. Such a result was not viewed as conducive to the purpose of the bill in encouraging collective bargaining. The report stated:

> In short, the intention of the committee in this regard is that cases of contract violation be entertained on a highly selective basis, when it is demonstrated to the Board that alternative methods of settling the dispute have been exhausted or are not available. S. Rep. No. 105 at 23.

The Senate's proposed unfair labor practice, which was intended to be limited in scope, was rejected by the Conference report. The Committee report stated:

> The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual process of the law and not to the National Labor Relations Board. H. Conf. R. No. 510 at 42.[6]

Contrary to *amicus'* contention, the "end" of the rejected subsection (d) was not accomplished in the statute as enacted. The rejection by the Conference Committee of the proposed unfair labor practice undercuts *amicus'* apparent position that the absence of the express language of the §203(d) of S. 55 is not determinative of the issue of Congressional intent to limit any employer's remedy.

Amicus has included in its brief an exchange between Senators Morse and Taft pertaining to Senator Taft's amendment which establishes a damage action against labor organizations that engage in illegal secondary activity. (Am. Br. 24-26) *Amicus* asserts that the significance of the dis-

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[6] In *Charles Dowd Box Co. Inc.* v. *Courtney*, 368 U.S. 502, 513 (1962), this Court recognized that Congress deliberately chose to leave the enforcement of collective bargaining agreements to the "usual processes" of the law.

cussion arises from Senator Taft's acceptance of Senator Morse's views on §301 and the proposed §303. (Am. Br. 26)

Petitioners submit that the discussion and subsequent revision by Senator Taft establishes only that Senator Taft agreed that individual union members acting on behalf of a union in a secondary boycott should not be subject to individual liability. Senator Taft's insertion of "labor organization" in the place of "person" brought his amendment in line with the intent of §301(b). See 93 Cong. Rec. 4840.

In their Supplemental Views on S. 1126, Senators Taft, Ball, Donnell, and Jenner urged for the adoption of a provision which would make secondary boycotts and jurisdictional strikes unlawful and which would provide a damage action by any damaged party. S. Rep. No. 105 at 54-56. It is clear from the report that Senator Taft and the others were concerned with improper *union* conduct. The Senators were concerned with the power of labor unions being used indiscriminately against the small businessman. S. Rep. No. 105 at 54.

The discussion between Senators Morse and Taft does not support any inference that Congress intended to preclude damage suits against individuals acting in derogation of their bargaining representative and in violation of their collective bargaining agreement. The discussion does establish that Senator Taft changed his amendment to make it consistent with the policy manifested in §301 that a damage action against a labor organization for acts performed by its agents can only be enforced against the assets of the organization.[7] By its very nature, a secondary boycott is conducted by union members acting on behalf of their union.

[7] The liability of the individual union members in the Danbury Hatters' case was based on the actions of the officers of the labor organization. The jury had been instructed that if the members paid their dues and continued to delegate authority to their officers to unlawfully

(Continued on Page 11)

Amicus has attempted to piece together segments of the legislative history of the Taft-Hartley to establish implicitly what Congress failed to do explicitly. *Amicus* recitation of certain aspects of the legislative history of §301 *does not* refute Petitioners' contention that the legislative history of §301 does not indicate that Congress intended to limit the relief available to an injured party under the factual situation of this case. The recitation does, however, highlight the absence of any explicit Congressional intention to prohibit actions against individual employees as sought by Petitioners.

III. RESPONDENTS' ASSERTION THAT THE REMEDY OF DISCHARGE OR DISCIPLINE OF EMPLOYEES IS LESS DISRUPTIVE OF INDUSTRIAL PEACE THAN A DAMAGE ACTION AGAINST INDIVIDUALS WHO ARE RESPONSIBLE FOR AN UNAUTHORIZED WORK STOPPAGE IS ERRONEOUS.

Respondents argue in their brief that the availability of a damage action against individual employees who participate in an unauthorized work stoppage in violation of the collective bargaining agreement would aggravate industrial strife, would delay early resolutions of disputes, and would be disruptive of industrial peace. (Resp. Br. 30) Respondents concede, however, that an employer has the prerogative to discipline or to discharge such employees if they are found to have participated in such unlawful conduct. (Resp. Br. 31)

(Continued from Page 10)

interfere with the company's business, and if the officers were warranted in believing that they were acting in matters within their delegated authority, the members were jointly liable. *Lawlor* v. *Loewe*, 235 U.S. 522, 535 (1915) This Court stated that the members who did not know in a specific case what was done were nonetheless "bound to know the constitution of their societies." 235 U.S. at 536.

Petitioners do not assert that Respondents' liability would be based on membership in a group. Petitioners would have to establish, at a minimum, actual participation in the unauthorized work stoppage. This matter would be for the determination of the trial court.

Respondents' policy argument assumes that discharge, described by one appellate court as "the industrial equivalent of capital punishment,"[8] is less inflammatory than a damage action against the individual employees. This assumption is untenable. The penalty of discharge is at least as, if not more, disruptive of industrial peace than the maintenance of individual damage actions. It cannot be seriously argued that employees will be more appreciative of an employer who discharged participants in a wildcat strike than of one who attempted to sue the participants for damages arising out of proven violations of a contractual no-strike clause.

Respondents state that once a money judgment is obtained, an employer would institute post-judgment collection proceedings and observe:

> It is difficult to imagine anything less conducive to promoting industrial peace and stabilizing industrial relations. Resp. Br. 30.

Petitioners have no similar difficulty and suggest that the prospect of employers being subjected to unauthorized work stoppages in violation of collective bargaining agreements which curtail normal business operations with no available remedy to recover the losses caused by the unlawful conduct is more disruptive of the collective bargaining relationship. The deterrent effect of the damage action sought by Petitioners more than outweighs any incidental disruptive effect on the collective bargaining relationship.

IV. CONCLUSION

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Sixth Circuit should be reversed with instructions to reinstate the damage claim.

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[8] *Griffin* v. *UAW*, 469 F.2d 181, 183 (4th Cir. 1972)

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APPENDIX

LISTING OF PARENT COMPANIES AND AFFILIATES OF PETITIONERS

Pursuant to Rule 28.1, Petitioners set forth the following information. Petitioner Complete Auto Transit, Inc. is a subsidiary of Ryder Systems, Inc. Affiliated companies are as follows:

Customized Parts Distribution, Inc.
Delavan Industries, Inc.
Murray Sandblast and Paint, Inc.
DPD, Inc.
Driveaway, Inc.
Janesville Auto Transport Company
M & G Convoy, Inc.
MTI Trailers, Inc.
Newark Releasing & Storage Co.
RDR, Inc.
RDR of Georgia, Inc.
RMX, Inc.
RPD, Inc.
Ryder Carrier Company
Ryder Europe, B.V.
Ryder Finance, Inc.
Ryder Capital Corp., Inc.
Ryder Equipment Corp., Inc.
Ryder Finance of Nevada, Inc.
Ryder Equity, Inc.
Ryder Leverage, Inc.
Ryder Realty, Inc.
Ryder Student Assistance Fund, Inc.
Ryder System, B.V.
Ryder Truck Rental, Ltd. (U.K.)
Ryder Truck Rental, Inc.
Ryder International Sales Corporation
Ryder Truck Rental, Limited
Ryder Truck Rental-One Way, Inc.
Southern Underwriters, Inc.
Specialized Parts Distribution, Inc.
Jack Rabbit Express Company
Specialized Transportation, Inc.
Summit Industries, Inc.
The Federal Assurance Company
Truckstops Corporation of America
Fleet Control Services, Inc.
Moore Brothers Oil Co., Inc.

Petitioner Automobile Carriers, Inc. is a subsidiary of Ralph C. Wilson Industries, Inc. Affiliated companies are as follows:

Ralph C. Wilson Claim Service, Inc.
WWTV
WWUP
KTSB
KGSC
Ralph C. Wilson Management Company, Ltd.
C & J Commercial Driveaway, Inc.
Motorcar Transport Company
Highwood Service, Inc.
Fotomat Drivethrough
Buffalo Bills, Inc.
Cole and Brown Agency, Inc.
Lockmoor Insurance Agency
Inland Tool and Manufacturing, Inc.
Ralph C. Wilson Agency
Inland Tool and Manufacturing, Inc.
Beam Industries, Inc.
Balfour Industries, Inc.
Wilson Communications, Inc.

Petitioner F. J. Boutell Driveaway Co., Inc. has recently been purchased by Ryder Systems, Inc. The purchase is subject to Interstate Commerce Commission approval. When the purchase is completed, Boutell will become a subsidiary of Ryder System, Inc.